

RESOLUTION NO. 1566

A RESOLUTION APPROVING THE COMMERCIAL LEASE AGREEMENT FOR SKYRMAN ARBORETUM WITH D.I.R.T. AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

Recitals:

- A. The City of Central Point acquired a parcel of park land, the Skyrman Arboretum, for which the park's benefactor requested that environmental classes/programs be operated.
- B. Direct Involvement Recreation Teaching (DIRT), an Oregon nonprofit, has agreed to lease the property from the City, as a shared use with City, in order to operate its office and provide environmental education classes and camps for youth, which is consistent with the City's intentions for this property.
- C. Regular use of the Skyrman Arboretum will reduce the City's monitoring needs, as there will be more regular attendance at the property.
- D. The City has determined it is in the public interest to partner with D.I.R.T. for the purpose of providing environment education classes at Skyrman Arboretum.

The City of Central Point resolves as follows:

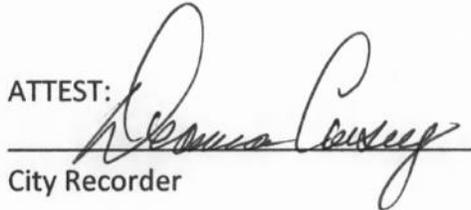
Section 1. The City Council approves the Commercial Lease between the City and D.I.R.T. in the form attached hereto as Exhibit "A", incorporated herein by reference.

Section 2. The City Manager is hereby authorized to execute the Commercial Lease with D.I.R.T. and any related documents necessary to effectuate the acceptance of this agreement.

Section 3. This Resolution shall take effect immediately from and after its passage and approval.

Passed by the Council and signed by me in authentication of its passage this 14th day of February, 2019.

ATTEST:


City Recorder


Mayor Hank Williams

**COMMERCIAL LEASE AGREEMENT
SKYRMAN ARBORETUM**

Effective Date: _____

Between: CITY OF CENTRAL POINT (“Landlord”)
an Oregon municipal corporation
140 S. Third Street
Central Point, OR 97502

And: DIRECT INVOLVEMENT RECREATION TEACHING (“Tenant”)
an Oregon nonprofit corporation
4588 N. Pacific Highway
Central Point, OR 97502

Landlord leases to Tenant, and Tenant leases from Landlord the following described property (the “Premises”) on the terms and conditions stated below:

Approximately 1369 square feet of commercial office/classroom space, consisting of the Skyrman Park Arboretum building located at 4588 N. Pacific Highway, Central Point, Oregon including the surrounding grounds, walkways and parking areas. The Premises shall include Tenant’s right to use of the City-owned refrigerator, tables and chairs. The Premises are depicted on the site plan, attached hereto as Exhibit “A.”

Tenant shall have the right to reasonable use of the areas within and surrounding the building in the manner in which such areas are improved, consistent with the terms of this lease. Tenant’s use of such areas is in common with Landlord and is subject to reasonable regulation. Tenant’s use of the Premises includes periodic use of the cabin depicted on Exhibit “A”. However, use of the cabin is restricted to occasional use and shall not be used for regular classes, camps of office space.

Section 1. Occupancy

1.1 Original Term. The term of this lease shall commence on _____ . The term of this lease shall continue for a period of one (1) year following the commencement date, unless sooner terminated as hereinafter provided.

1.2 Renewal Terms. If the lease is not in default when the renewal term is to commence, this Lease shall automatically renew for three (3) successive terms of one year each as follows:

(a) The renewal term shall commence on the day following expiration of the immediately preceding term.

(b) Unless Landlord or Tenant provides written notice to the other of its intent not to renew the lease, given not less than three (3) months before the last day of the expiring term, this Lease shall automatically renew as provided in this Section 1.2.

(c) The terms and conditions of the Lease for the renewal term shall be identical with the original term except that Tenant will no longer have any option to further renew.

Section 2. Rent

2.1 Base Rent. During the first year of the term and each year thereafter, Tenant shall pay to Landlord, as base rent, the sum of \$1.00 per year.

2.2 Additional Rent. All insurance costs and maintenance that Tenant is required to perform under this Lease and any other sum that Tenant is required to pay to Landlord or third party shall be additional rent.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for environmental education for children, offices, public events, family education, and child development activities. Such education shall be geared toward education specific to the flora and fauna located at the Premises.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to affect such compliance unless such changes are required because of Tenant's specific use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord, which limitations shall be communicated to Tenant in writing.

(5) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this lease, Tenant shall remove all Hazardous Substances from the Premises which Tenant, or Tenant's agents, employees, guests or invitees, caused or permitted to be placed on the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

Section 4. Repairs, Maintenance, Replacements and other Duties.

4.1 Landlord's Obligations. During the term of this Lease, Landlord shall be obligated to maintain and perform the following:

- (1) Repairs, maintenance and replacements of roof and gutters, exterior walls (including painting), bearing walls, structural members, sub-floor, and foundation.
- (2) Repairs, maintenance and replacement of interior and exterior water, sewage, gas, and electrical utility lines located on the Premises.
- (3) Maintenance of all landscaping and walkways and the parking area on the Premises.
- (4) Remodeling of Skyrman building as deemed necessary by Landlord in its sole discretion.
- (6) Repairs, maintenance and replacement of the heating and air conditioning system for the Premises.
- (7) Repairs, maintenance and replacement of all sidewalks along the exterior boundaries of the Premises.
- (8) Purchase and maintenance of refrigerator to be located in the building.
- (9) Installation and maintenance of signage for Premises.

(10) Periodic janitorial service to Skyrman house as deemed necessary in Landlord's sole discretion.

(11) Provide for connection of Premises to City sewer within the first term of the Lease and provide portable restroom facilities for camp programs or public events until such connection is accomplished.

(12) Prepare and provide education materials, brochures, etc. regarding the Skyrman Arboretum for public distribution.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

(1) Repairs, maintenance and replacements of (including painting), interior walls, ceilings, doors, windows, and related hardware, flooring, light fixtures, and switches/plugs within the Premises.

(2) Any repairs, maintenance and replacements necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 6.2 dealing with waiver of subrogation but including repairs that would otherwise be the responsibility of Landlord under Section 4.1.

(3) Provide routine janitorial services and maintain the Premises in a neat and orderly condition.

(4) Develop recreational classes and camps designed specifically for the Skyrman Arboretum, including local flora and fauna.

(5) Develop site-specific educational materials for D.I.R.T. programs offered at the Premises and furnish and supply all expendable materials necessary to carry out its programs while furnishing services on the Premises.

(6) Train and provide an adequate number of competent personnel to supervise all activities on the Premises. Tenant shall enforce all of Landlord's rules, regulations, and policies while supervising activities or programs on the Premises. Tenant shall ensure its employees and volunteers complete and successfully pass the City of Central Point's application and background check requirements prior to performing any services at the Premises. City will pay the cost of any such background check.

(7) Ensure Premises remain locked and secured outside Tenant's regular business hours.

Repairs, maintenance and replacements performed by Landlord and/or Tenant shall comply with all applicable laws and regulations.

4.3 Reimbursement for Repairs Assumed. If either party fails or refuses to make repairs, maintenance or replacements that are required by this Section 4, the other

party may make the repairs and charge the actual costs of the repairs, maintenance and replacements to the first party. Such expenditures shall be reimbursed by the first party on demand together with interest at the rate of twelve percent (12%) per annum from the date of expenditure. Such expenditures by Tenant may be deducted from rent and other payments subsequently becoming due if not repaid by Landlord within 30-days of the expenditure. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless at least 15 days before work is commenced, the defaulting party is given notice in writing outlining with reasonable particularity the work required, and such party fails within that time to initiate such work in good faith.

4.4 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times, upon reasonable notice, to determine the necessity of repairs, maintenance or replacements. Whether or not such inspection is made, the duty of Landlord to begin repairs, maintenance or replacements shall mature within 15 days after Landlord has received from Tenant written notice of the work that is required. Landlord shall complete any repairs required of Landlord within a reasonable timeframe considering the nature and extent of the repair.

4.5 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

4.6 Scheduling/Registration D.I.R.T. Programs at Arboretum

4.6.1 Registration for Programs Offered at the Premises. Landlord agrees to provide class and camp registration for Tenant programs provided at the Premises through Landlord's on-line registration program. Landlord further agrees to publish D.I.R.T. programs provided at the Premises in its City Recreation Guide.

4.6.2 Master Schedule. Landlord and Tenant shall develop a master schedule for joint use of the Premises, including establishing minimum and maximum attendance standards for particular events. Landlord and Tenant shall make a good faith effort to schedule regular meetings in October, February, June or at such other times as mutually agreed upon by the parties. At these meetings, Landlord and Tenant will review and evaluate the status and condition of the Premises and confirm the upcoming season schedule for the Premises. Events may be cancelled by DIRT prior to commencement in the event minimum registration requirements are not satisfied. In addition, in the event an unanticipated change of schedule is required, either party must provide the other party written notice no less than 45-days prior to the proposed change. Notwithstanding the foregoing, where such change would impact an event which has: 1) already opened for registration; 2) been published in the City Recreation Guide; 3) or otherwise would

detrimentally impact a previously planned event, such schedule change shall not become effective until the completion of such previously planned event, absent the written consent of both Landlord and Tenant.

4.6.3 Registration Fees – D.I.R.T Events. Landlord shall collect any registration fees for Tenant's programs on Tenant's behalf to be used to cover the cost of providing of such programs and shall distribute such fees to Tenant within 15-days of receipt of monthly invoice from DIRT for payment of such fees.

Section 5. Alterations

5.1 Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent, which consent shall not be unreasonably withheld. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. As used herein, "alterations" includes the installation of computer and telecommunications wiring, cables, and conduit.

5.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant after the Commencement Date, shall at Landlord's option, be removed by Tenant and the Premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise.

Section 6. Casualty Insurance

6.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant may carry similar insurance insuring the property of Tenant on the Premises against such risks but is not required to insure.

6.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 7. Taxes; Utilities

7.1 Property Taxes. Tenant shall pay as due all taxes (if any) on its personal property located on the Premises. The Premises are exempt from any real property taxes.

7.2 Payment of Utility Charges. Landlord shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal (including street fee and other fees and systems development charges billed by the City of Central Point with its billings for with water and sewage disposal charges), and power. Tenant shall pay when due all charges for routine janitorial services.

Section 8. Damage and Destruction

8.1 Partial Damage. If the Premises are partly damaged and Section 8.2 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 4.3.

8.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 30 percent of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

8.3 Damage Late in Renewal Term. If damage or destruction to which Section 8.1 would apply occurs within 3-months before the end of a lease term, Landlord or Tenant may elect to terminate the lease by written notice to the other given within 30 days after the date of the damage. Such termination shall have the same effect as termination under Section 8.2.

Section 9. Eminent Domain

9.1 Partial Taking. If a portion of the Premises is condemned and Section 9.2 does not apply, the lease shall continue on the following terms:

(1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation, except for that portion of the award which reflects the unamortized value of any permanent improvements to the structure of the building in which the Premises are located which have been installed and paid for by Tenant following the commencement of the lease term. Tenant shall also be entitled to claim against the condemning authority for its moving expenses and associated expenses and damages.

(2) Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

9.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Tenant was then making of the Premises, the lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination under Section 9.1(1). Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation, except for that portion of the award which reflects the unamortized value of any permanent improvements to the structure of the building in which the Premises are located which have been installed and paid for by Tenant following the commencement of the lease term. Tenant shall also be entitled to claim against the condemning authority for its moving expenses and associated expenses not covered by insurance.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

Section 10. Liens, Indemnity and Liability Insurance

10.1 Liens

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of twelve percent (12%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant.

Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence or intentional or fraudulent act or omission or Landlord's breach of duty under this lease, or such acts by Landlord's agents, employees.

10.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenant's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a limit of not less than \$1,000,000 combined single limit per occurrence. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 10.2 and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property.

Section 11. Quiet Enjoyment; Estoppel Certificate; Subordination and Attornment.

11.1 Quiet Enjoyment. Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

11.2 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

11.3 Subordination. Any deed of trust, mortgage or other lien ("Mortgage") granted by Landlord which affects the Premises shall be and remain, as it may be modified or extended, at all times, a lien or charge on the Premises prior and superior to the lien or charge of this lease.

11.4 Attornment. In the event the holder of any Mortgage forecloses its lien, exercises any power of sale, or exercises any other remedy under any loan documents encumbering the Premises, or in the event of conveyance of title to the Premises by deed in lieu of foreclosure, Tenant agrees to accept and attorn to the purchaser of the Premises, and its successors and assigns as the new Landlord of the Premises, and, until terminated

pursuant to its provisions, this lease shall continue in full force and effect as a direct lease between such purchaser and its successors and assigns and Tenant, with privity of contract and with the same force and effect as if this lease had initially been entered into between them.

11.5 Self Operative Provisions. The foregoing provisions of this Sections 11.3 and 11.4 shall be self-operative and effective without the execution of any further instruments on the part of any party hereto.

Section 12. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord, which consent shall not be unreasonably delayed or withheld. This provision shall apply to all transfers by operation of law. If Tenant is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in one instance shall prevent the provision from applying to a subsequent instance. Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances.

Section 13. Default

The following shall be events of default:

13.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after it is due.

13.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Tenant begins correction of the default within the 30-day period and thereafter, proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 13.3 shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to

Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

13.4 Abandonment. Failure of Tenant for 15 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 14. Remedies on Default

14.1 Termination. In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

14.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any customary and suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises (exclusive of capital improvement costs to the common areas), but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of normal and customary rent-free occupancy or other rent concessions.

14.3 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(1) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

14.4 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be

reimbursed by Tenant on demand with interest at the rate of twelve percent (12%) per annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

14.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 15. Surrender at Expiration

15.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Tenant's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

15.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease 10 days following written notice to Tenant of such abandonment, or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

15.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the

Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 30 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

16.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

16.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

16.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

16.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

16.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

16.6 Entry for Inspection. Upon reasonable notice, Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last four months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

16.7 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease. This section shall not be construed to require Tenant to make non-emergency improvements to the Premises, prior to obtaining adequate grant funding for such work.

16.8 Good Faith Requirement. Notwithstanding anything to the contrary herein, each party hereto shall act in good faith in a commercially reasonable manner in

discharging each and every one of its duties and obligations or in exercising its rights under this lease.

16.9 Authority. The person executing the Lease on behalf of Tenant hereby covenants and warrants that the execution of this Lease has been duly authorized by Tenant, that Tenant is qualified to do business in Oregon, and that the person signing on behalf of Tenant was authorized by Tenant to bind Tenant to this Lease. Upon Landlord's request, Tenant shall provide Landlord with evidence satisfactory to Landlord confirming the foregoing covenants and warranties.

Section 17 Arbitration.

17.1 Disputes to Be Arbitrated. If any dispute arises between parties, either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within 10 days of the choosing of the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the premises are located to appoint the required arbitrator.

17.2 Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

Wherefore, the parties have caused this Lease to be executed as of the date set forth above.

CITY OF CENTRAL POINT

**DIRECT INVOLVEMENT
RECREATION TEACHING**

**By:
Its:**

**By:
Its:**